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Motion to Dismiss
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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~565~~ 344 64

AARON B. VANNEVAR, EDWARD S. DANE, ANDREW PEIRCE, JR., T. W. PEIRCE, W. W. BRADSTREET, P. G. BRADSTREET, JASON COLLINS, JULIA KIMBALL, AND THOMAS A. RICH, CLAIMANTS OF STEAMBOAT, "EASTERN QUEEN," PLAINTIFFS IN ERROR,

vs.

BENJAMIN R. BRYANT.

IN ERROR TO THE SUPERIOR COURT OF THE STATE OF MASSACHUSETTS.

FILED DECEMBER 7, 1879.

SUPREME COURT OF THE UNITED STATES.

No. 565.

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1 COMMONWEALTH OF MASSACHUSETTS, *Suffolk, ss:*

To the sheriffs of our several counties or their deputies, greeting:

[SEAL.] We command you to attach the goods or estate of the owners of the steamer Eastern Queen, whose names are unknown to the plaintiff, but whom, for the purposes of this suit, the plaintiff calls John Doe & Richard Row, to the value of ten thousand dollars, and summons the said defendants (if they may be found in your precinct) to appear before our justices of our superior court next to be holden at Boston, within and for our said county of Suffolk, on the first Tuesday of January next, then and there in our said court to answer unto Benjamin R. Bryant, of Boston, in our county of Suffolk, commission-merchant, in an action of tort, to the damage of the said plaintiff, as he says, the sum of ten thousand dollars, which shall then and there be made to appear with other due damages. And have you there this writ, with your doings therein.

Witness Seth Ames, esquire, at Boston, the eighteenth day of December, in the year of our Lord one thousand eight hundred and sixty-eight.

[SEAL.] JO'S A. WILLARD, *Clerk.*

Copy.
Attest: , *Clerk.*

2 SUFFOLK, *ss:*

BOSTON, *Dec.* 18, 1868.

By virtue hereof I this day attached the steamer Eastern Queen, the property of the within-named defendants, and summoned them to appear and answer at court, by giving in hand an attested copy of this writ; and also a summons to Aaron B. Vannevar, duly authorized agent of said defendants.

BENJ. F. BAYLEY,
Dep'y Sheriff.

Service & travel, 3.08; summons, 50; copy & stamp, 1.05; keeper's fees, 2.00; custody, 1.00; oath, 25—7.88.

I certify that the expenses taxed in my return on this writ have been incurred, and that the same are reasonable.

BENJ. F. BAYLEY.

Sworn to before me.

JNO. H. DEARBORN,
Justice of the Peace.

3 SUFFOLK, *ss:*

BENJ. R. BRYANT
vs.
OWNERS OF THE EASTERN QUEEN. } Superior court.

Plaintiff's declaration.

And the plaintiff says the defendants, on the 12th day of September, A. D. 1869, on board of the Eastern Queen, a steamboat plying between the port of Boston, in the commonwealth of Massachusetts, and the port

of Gardiner, in the State of Maine, and belonging to the defendants, and then being on her trip to said Gardiner, did assault, beat, wound, and maltreat the plaintiff, he being then on board of said steamer, and upon the high seas, as a passenger, bound to said Gardiner, & having paid for his passage thereto; and did harshly and wantonly place him, the plaintiff, in a state-room, and there kept him without care or attention for the space of one night, he then and there being in great
4 bodily pain in consequence of said beating, whereby he suffered great damage in the loss of his time, and great expense for medical attendance thereafter.

And the plaintiff also says the defendants, by their servants and employees on board of the steamboat Eastern Queen, then and there belonging to them, & while on her passage from the port of Boston aforesaid to said port of Gardiner, the plaintiff then and there being a passenger, bound from said Boston to said Gardiner, having paid for his passage thereto, did assault, beat, bruise, & wound the plaintiff, so that he was deprived of his senses and otherwise seriously injured about his head & person, so that his life was dispaired of, & he was, in consequence of said injuries then & there inflicted upon him by said employees & servants of the defendants, confined to his house, and under medical treatment for the period of nearly two months, and still is suffering in his person great pain, in consequence of said injuries.

BENJAMIN R. BRYANT.
By his attorneys, C. CUMMINGS.
J. Q A. BRACKETT.

5 COMMONWEALTH OF MASSACHUSETTS, *ss:*

The superior court. January term, 186 .

I, F. B. Dyer, in behalf of the defendant' in the above-entitled action, on oath say, that I verily believe that they have a substantial defence thereto on its merits, and intend to bring the same to trial.

FRANK B. DYER.

SUFFOLK, *ss:* *January* 15, 1869.

Subscribed and sworn to before me.

M. DYER, JR.,
Justice of the Peace.

6 *Defendants' answer.*

And now comes the defendant', and, for answer to the plaintiff's writ and declaration, deny each and every allegation set forth. They deny that they committed any assault upon the plaintiff; deny that they kept or placed him in a state-room without care; or that in any way the defendants, or either of them, committed any assault upon plaintiff, or in any way did him an injury.

And defendants deny that they, or their servants, or they, by their servants, made any assault upon the plaintiff, or in any way caused him any injury.

M. DYER, JR.,
For the Def'ts.

April term, 1869.

And now comes the defendant' in the above-entitled action, and
7 says that one Ezra B. Carr, a witness for the defendant', is about

to leave the State, not to return in time for the trial of said cause. Wherefore the defendant' respectfully prays that a special order of court may be given to authorize the taking the deposition of said witness this p. m., at 2 & ½ o'clock.

Motion allowed.

April T., 1869.

And the comes and moves this hon. court for leave to amend his writ as follows:

To increase the ad damnum in said writ to twenty thousand dollars, instead of ten thousand named therein.

Motion allowed.

April term, 1870.

Motion to amend.

And now comes the plaintiff in the above action and moves to amend his writ by striking out the words "whose names are unknown
8 to the plaintiff, but whom, for the purposes of this suit, the plaintiff calls John Doe and Richard Rowe," and inserting in place thereof the following: Isaac Rich, Thomas A. Rich, Thomas W. Pierce, all of said Boston; Aaron B. Vannevar, of Malden, in our county of Middlesex; Edward S. Dane, of Brookline, in our county of Norfolk; Jason Collins, Julia Kimball, and W. W. Bradstreet, as he is the administrator of the estate of William Bradstreet, of Gardiner, in the State of Maine, and Andrew Pierce, jr., of St. Louis, in the State of Missouri.

Motion allowed.

9 April term, 1870.

Amended declaration.—A new count in place of last amend't.

And the pl'ff says the def'ts, on the 12th day of Sept'r, A. D. 1868, were common carriers of freight and passengers by water between said Boston and the city of Gardiner, in the State of Maine, and owned and used a steamboat called the Eastern Queen, in the prosecution of their said business as common carriers, as aforesaid, and the plaintiff was then and there a passenger upon the def'ts said steamboat upon her trip from said Boston to said Gardiner; and it thereupon became and was the duty of said def'ts to transport the plaintiff from said Boston to said Gardiner with safety and reasonable comfort and despatch, and to use due and proper care and skill in and about the carrying of the plaintiff on said journey, and to exercise the utmost care and vigilance in selecting proper agents and servants in the business of running said steamboat on her trip aforesaid, and in attending to the comfort and safety of the passengers, including the plaintiff, and in maintaining
10 order upon said steamboat, and in guarding the plaintiff against violence from whatever source arising while he was a passenger upon said steamboat. Yet the def'ts, regardless of their duty, so carelessly, negligently and improperly conducted themselves in that behalf, that they did not transport the plaintiff from said Boston to said Gardiner with reasonable comfort and safety, and did not use due and proper care and skill, in and about the carrying of said plaintiff upon said

journey, and did not exercise the utmost care and vigilance in selecting proper agents and servants in the business of running said steamboat, and in attending to the comfort and safety of the passengers thereon, including the plaintiff, and in maintaining order upon said steamboat, and in guarding the pl'ff against violence from whatever source arising, while he was a passenger upon said boat; and so carelessly, negligently, and improperly conducted themselves in and about the carrying of the plaintiff on the said steamboat on said journey, that they then and there, and carelessly and negligently, and wilfully suffered and per-
11 mitted the plaintiff to be set upon, assaulted, and beaten by persons upon said boat, and by their agents and servants, whereby, the plaintiff was severely wounded and injured, and suffered great bodily and mental pain and anguish, and was for a long time confined to his house and under medical treatment, and subjected to great expense for medical attendance and care, and has been rendered unable to attend to his business, and has been permanently injured in body and mind.

Allowed.

Verdict.

April term, A. D. 1870.

The jury find for the plaintiff, and assess damages in the sum of eight thousand dollars.

W'M H. GREGERSON,
Foreman of the 1st Jury.

12 April term, 1870.

Defendants' bill of exceptions.

Action of tort. Writ and pleadings may be referred to. At the trial the plaintiff introduced evidence tending to prove the following facts: The def'ts are common carriers of freight & passengers. The plaintiff was a passenger on the defendants' steamer, on a trip from Boston to Gardiner, in the State of Maine, on the twelfth of September, 1868. During the passage and shortly after the passengers had risen from the supper-table which was spread in the lower saloon, one of the waiters accused one of the passengers, named Coggin, of not having paid for his supper, and a talk took place between them about it, at which the plaintiff was not present. But the plaintiff a few moments afterwards came down from the deck into the saloon for the purpose of finding Coggin, who was his cousin, and found him seated and talking with two of his friends, also passengers. While the pl'ff stood there by them the steward of the boat came up, and addressing Coggin and his two
13 friends, said "One of you three fellows hasn't paid for your supper." Coggin replied, "I suppose you mean me. It is the third time you have been to me. I have paid for my supper," and thereupon produces some money from his pocket, saying "Here's the half-dollar you gave me back. But rather than have any trouble I will pay you for it again." The plaintiff thereupon put his hand on the steward's shoulder and said, "This cousin of mine is a good honest boy, and would'nt cheat you out of anything, and I will pay you rather than have any trouble." The steward replied, "Very well, if he has paid, all right;"

and turned and walked away a few steps to where some of the waiters were clearing off the table. One of the waiters then said to the steward with an oath, "He has not paid for his supper;" to which the steward said, "Clean him out." And the steward and one or two of the waiters then walked towards Coggin. One of the waiters said to Coggin, "Have you got a berth?" He said, "I have." The waiter replied, "Damn you, get into it." Thereupon the plaintiff said to Coggin, "I don't think
14 they have any right to order you to get into your berth until you get ready to." The waiter replied, "Damn you, you take it up," and struck the plaintiff, who said "Hold on; what have I done?" The waiter however struck him again, as did also the steward, and the other waiters, according to some of the witnesses. Neither the plaintiff nor Coggin nor any of the passengers, a large number of whom immediately collected, struck the steward or waiters. The plaintiff was struck several times, knocked down upon the floor, and seriously hurt.

The assault lasted, according to the different estimates of different witnesses, from ten seconds to ten minutes. There was no evidence of loud noise or shouting. The crowd of passengers gathered round the waiters, Coggin, the plaintiff, and the others as soon as the striking began. The mate of the ship came *came* down into the saloon soon after the plaintiff was first struck, rushed into the crowd of passengers and others, throwing them aside, with his arms extended, and picked up the plaintiff after he had fallen and removed him to another part of
15 the steamer to be taken care of. The waiters immediately returned to their work, and the passengers dispersed.

This was, in substance, all the evidence offered by the plaintiff except upon the question of damages. The defendants offered no evidence.

The defendants requested the court to instruct the jury as follows:

1. That, upon the evidence offered, the pl'ff is not entitled to maintain the action.

2. That there is no evidence that the steward and waiters in assaulting the plaintiff were acting within the scope of any authority, or in the discharge of any duty imposed upon them by defendants.

3. That there is no evidence from which the jury are authorized to find what was the scope of the authority and duties imposed on the steward or waiters by defendants, or whether they or either of them were authorized in any case, and if so, in what cases, to use force towards any person on the boat.

4. There is no evidence that the def'ts had failed to exercise
16 proper care in the selection of a suitable steward and waiters upon the boats.

5. There is no evidence that the deft 'ts had failed to exercise proper care in the selection of suitable officers, and a sufficient number of them for the boat.

6. If the defendants had been guilty of no want of care in providing a suitable boat and proper officers and employés to manage the same, they are not liable for an assault upon the pl'ff committed by one or more of their employés not acting at the time in the discharge of any duty imposed upon him or them by the def'ts.

7. There is no evidence that the officers of the ship did not interfere and protect the plaintiff as soon as they were apprized of the assault, or that there was any want of care on their part for which the def'ts would be responsible in their not knowing earlier of the assault.

8. The fact that the servants of the def'ts made an unjustifiable assault on plaintiff is no evidence that the defendants failed to exercise proper care in the selection of their servants.

17 9. The defendants were not bound to anticipate that violence might be committed upon the plaintiff or any one else by any of their servants or passengers, and were not bound to protect the pl'ff against the possible violence of such servants or passengers, unless they had previous notice of some disposition on the part of some one or more of them, or of some circumstances or state of things calculated reasonably to cause them to apprehend such violence; and in this case there is no evidence that they had any such previous notice.

10. The general knowledge and common experience of the jury of the acts done by steward or waiters on steamboats on which jury or some of them may have been, does not authorize them, in this case, to find that the steward and waiters on the Eastern Queen had authority from these defendants to do such things as the jury or some of them may have seen other stewards or waiters do, and cannot be regarded by them in determining the scope and authority of the duties of
18 the steward or waiters on this particular occasion.

11. The fact that, after the assault was committed, the plaintiff was taken to a state-room and there treated, whether properly or improperly for his injuries, is entirely immaterial in determining the question of the defendants' liability in this action.

The court instructed the jury in accordance with the second, third, and eleventh prayers, but declined to give the remaining instructions prayed for, and instructed the jury as follows, (the charge being phonographically reported:)

"The defendants, as common carriers of passengers, are bound to use the utmost care which is consistent with the nature and extent of the business in which they are engaged, in the transportation in safety of their passengers. This duty requires not only such care in the management of the vehicle itself, but in providing and maintaining all such reasonable arrangements in regard to the control, dis'ipline, and supervision of all persons on board as the safety of the passen-
19 gers may require, as a prudent man would to guard against all danger from any source arising, which may naturally and according to the usual course of things be expected.

"And applying this rule a little more exactly to the circumstances of this case, the precise rules of duty to which, as applicable to the circumstances of this case the defendants are to be held, are these:

"They are bound to select and employ a sufficient number of suitable and competent servants to meet any exigency which they might, in the exercise of the greatest vigilance and care consistent with the nature and extent of their business, have reasonably anticipated.

"They are bound to exercise the same degree of care in maintaining order and guarding the passengers against violence from whatever source arising, which might reasonably be anticipated or naturally to be expected to occur in view of all the circumstances of the case; and all the agents and servants of the defendants are bound, in their
20 respective spheres of duty, to protect a passenger against acts of violence of their employés, as well as of strangers, so far as the same is reasonably in their power.

"When actual violence has commenced, it then becomes the further duty of the defendants, through their appropriate servants and agents, to do all that circumstances allow to check and prevent the continuance of such violence upon other passengers; and if the' fail to do all that they could or ought to have done to stop a continuing assault upon the plaintiff then, for any injury resulting from such negligence,

after the assault might have been checked as above, the defendants are liable.

"This last proposition is given in view of the evidence in regard to the length of time in which the assault continued. They are bound to exercise such police arrangements as you, in the exercise of your judgment, shall think was reasonable to prevent an assault. They are not absolute insurers against assaults. There may be assaults, and this may be an assault against which no reasonable measure of pre-
21 caution could have insured any one. You are to apply the rule that I have given and see whether or not they have used that degree of care and supervision which was reasonable on their part to protect passengers against acts of violence of their employés as well as strangers.

"If you find that they have not, then, of course the plaintiff is entitled to recover. If you find that, so far as the assault is concerned, it was impossible for them to prevent it, then you have a further question to consider.

"As to the time of the continuance of the assault, the witnesses put the period, varying from ten seconds to ten minutes. Of course, if the transaction was but ten seconds, this instruction would be entirely outside and of no practcal use. If the transaction was ten minutes, it would be for you then to apply the rule that I have stated, and for you to say if there was a sudden assault, as the evidence in one aspect of it would tend to show a sudden attack by one of the waiters, whether there was time
22 for their employés or servants to have interfered and checked the progress of the assault. If they did not interfere and had an opportunity to interfere—if, instead of interfering and checking they encouraged or stood by indifferent to the matter—if they did not do all that could be done, then they are responsible.

"In other words, if the defendants are not responsible for tortion acts outside of the employment of the servant, they are responsible at all times for the care taken by their servants, and negligence is something for which they are always responsible—negligence within the rules I have given you. And it is for you, looking at the matter as reasonable, practical men to find then whether they were guilty of negligence in this matter. The acts of their servants are acts of the company, and if they are negligent the company is charg'able in this action. If they were guilty of negligence, then, of course the company is liable.

"If you find that the defendants were negligent in regard to the proper arrangements of the boat and the care to be exercised in
23 preventing an assault, precautionary measures, then of course, they are liable for all the consequences of that neglect upon the plaintiff. If there was neglect in their interference, then it would be for you to say for what portion of the plaintiff's injury they were answerable, after they might have interfered and did not interfere. However difficult that may be, if you are brought to that posture of the case, it would be for you to apply your best judgement.

"If all was done in this particular, that reasonable men would say was proper and right under the circumstances, that is all that is required, but less will not suffice. So that, gentlemen, we come back very much to your own judgment, as to what, under all the circumstances of this case, could have been reasonably expected."

In regard to the tenth prayer the court instructed the jury as follows:

"The acts done by the steward and waiters on the occasion, as matter of law, were not within their scope and authority, and as to the

24 duties of the steward or waiters, as bearing upon any other part of the case, you will be governed as upon every part of this case, solely by the law and the evidence given you; and no facts known to any or all the jury outside of these can properly be considered; but if the common knowledge and common experience of the jury help them to interpret and understand the evidence and the application of the law thereto, it is impossible, if it were desirable, to exclude it from their minds.

"That is to say, you have a right to use all your knowledge in the application of your judgments to the facts; but you are to take the case as developed by the evidence on *on* the stand."

The court further instructed the jury as follows:

"The action is against the common carrier for negligence, and the gist being for negligence on the whole case, the jury are to be satisfied that the defendants were or were not negligent.

25 "It may happen from some development of the plaintiff's case that it presents such a case as calls upon the defendants for an explanation. Upon the whole matter the jury must be satisfied that, within the rule of law, there was some degree of negligence on the part of the defendants."

After the instructions had been given, the defendants' counsel requested the court to give the following instruction:

"If the steward and waiters were engaged in making the assault the defendants are not liable for their negligence in omitting to stop it any more than they are for making it."

The court declined so to instruct the jury, but did instruct them as follows:

"The servants and employés would not be excused from any rule of diligence, because they chose to add to negligence a violation of the law. The same rule of diligence would be equally upon them, and the corporation would be equally answerable for their negligence as if they were not engaged in the assault."

26 And in answer to a request from a juror for further instruction as to what was the scope of the respective duties of the employés on the steamer, the court instructed them as follows:

"You must exercise your own judgment. No evidence has appeared in regard to the respective duties of the officers of the boat. The duty of the employés of the boat must depend upon circumstances. The duties of the officers must be different under certain circumstances from what they would be under other circumstances, and there may be emergencies which would call upon the officers to perform still different duties. There can be no law in the matter. You are to use your own judgment."

The jury returned a verdict for the plaintiff with eight thousand dollars damages.

The defendants, being aggrieved by the above rulings and refusals to rule, excepted thereto, and present this their bill of exceptions and pray that the same may be allowed.

Examined and allowed and filed.

27 COMMONWEALTH OF MASSACHUSETTS:

Supreme judicial court for the Commonwealth. At Boston, January term, 1871.

IN THE CASE OF BENJAMIN R. BRYANT
vs.
OWNERS OF STEAMER EASTERN QUEEN.

Pending in the superior court for the county of Suffolk.

Ordered that the clerk of said court in said county make the following entry under said case in the docket of said court, viz:

Exceptions overruled.

By the court.

GEO. C. WILDE, *Clerk.*

MARCH 15, 1871.

Brief statement of the grounds and reasons of the decision.

The contract of the defendants, as carriers, was not merely for
28 ship-room and transportation from one place to another, but for good treatment, and against personal rudeness and any wanton interference with their persons, either by the carriers, or their agents employed in the management of the steamer, including the crew, as well as the officers. The acts proved were in violation of this contract.

January term, 1871.

And now come the defendants and move for leave to file a motion for new trial in said action, specially on ground that the damages were excessive; and aver that the condition of pl'ff since the trial has been such as to show that the estimate of the extent of the injury on which the verdict was based was incorrect.

Judgment stayed until hearing.

Jan'y term, 1871.

And now come the d'f'ts and move that the verdict may be set aside because the damages were excessive.

29 Motion for new trial overruled.

Defendants' petition for removal of said action to the U. S. circuit court.

Now come Peter G. Bradstreet, William W. Bradstreet, and Julia Kimball, all of Gardiner, in the county of Kennebec, and State of Maine, defendants in the above-entitled action, and, before final hearing therein, respectfully represent that the plaintiff in said action is a citizen of Massachusetts, and they, the def's as aforesaid, are citizens of the State of Maine; that the matter in dispute exceeds the sum of $500, exclusive of costs; that they have reason to and do believe that, from prejudice and local influence, they will not be able to obtain justice in the court in which said action is now pending as aforesaid:

Wherefore they petition this honorable court for the removal of said suit into the next circuit court of the United States, to be held in the district of Massachusetts, where said suit is now pending, and

30 they hereby offer good and sufficient surety for their entering in such court on the first day of its session, copies of all process, pleadings, depositions, testimony, and other proceedings in said suit, and doing such other appropriate acts, as by law are required to be done upon the removal of a suit into the United States court.

W'M W. BRADSTREET.
PETER G. BRADSTREET.
JULIA KIMBALL.

Affidavit.

Peter G. Bradstreet, William W. Bradstreet, and Julia Kimball, all of Gardiner, in the county of Kennebec, and State of Maine, being severally duly sworn, on oath depose and say that they are defendants in the above-entitled action, and are citizens of the State of Maine; that the matter in dispute in said action exceeds the sum of five hundred dollars, exclusive of costs; and that they have reason to
31 and do believe that, from prejudice and local influence, they will not be able to obtain justice in said State court, to wit, the superior court for the Commonwealth of Massachusetts.

WILLIAM W. BRADSTREET.
PETER G. BRADSTREET.
JULIA KIMBALL.

STATE OF MAINE, *Kennebec, ss:*

MARCH 18, 1871.

Then personally appeared the above-named Peter G. Bradstreet, William W. Bradstreet, and Julia Kimball, and made oath that the above statement by them signed was true.

Before me.

LORENZO CLAY,
Justice of the Peace.

Superior court. April term, 1871.

Defendants' bill of exceptions.

This is an action to recover damages for injuries sustained by
32 the plaintiff while a passenger on defendants' vessel. The writ is dated Oct., 1868. The plaintiff is a citizen of Massachusetts. The writ described the defendants as John Doe and Richard Roe. Service was made by attachment of the vessel, which attachment was dissolved by a bond. At the trial in this court, at the April term, 1870, the plaintiff amended the writ by inserting the names of the real defendants, nine in number, three of whom were citizens of Maine, and one of Missouri, the others of Massachusetts.

During the trial the plaintiff amended the declaration by the addition of a new count, and the trial was then suspended for four weeks, and then resumed, and a verdict rendered in favor of the plaintiff for $8,000 damages. Exceptions taken by defendants to the rulings of the presiding judge, and allowed by him, were argued before the supreme judicial court, which sent down a rescript at the January term, 1871, overruling the same. The defendants then presented a motion for a new trial, and also filed a special motion, in conformity with
33 the rules of this court, setting forth grounds on which they claimed that the motion for new trial should then be filed. Both motions, together with the order of the court thereon, are made part of these exceptions, and copies annexed.

Before a hearing was had, those of the def'ts who were citizens of Maine, made and filed an affidavit in accordance with the provisions of an act of Congress, Mar. 2, 1867, (14 Stat. at Large, 558,) and a petition for the removal of this suit to the next circuit court of the United States to be held in this district, and offered good and sufficient surety for their entering in said court copies of all proceedings as required by said act.

A hearing was had on this petition at the present term, at which it appeared that the copies aforesaid had been filed with the clerk of the circuit court for entry at the next (May) term.

One of the petitioners for removal was present at the trial, and also at a preceding term of the court at which the trial was postponed on account of the absence of a witness.

34 The plaintiff, at said hearing on the petition to remove, objected that it was too late for the defendants now to obtain an order for the removal of the suit, and the court on that ground declined to grant the petition; to which ruling the defendants, being aggrieved thereby, except and pray that their exceptions may be allowed.

Allowed and filed.

Copies of motions referred to.

SUPERIOR COURT, *Suffolk, ss:*

BRYANT
vs.
"EASTERN QUEEN." } Jan'y T., 1871.

Motion for leave to file motion for new trial.

And now come def'ts and move for leave to file a motion for new trial in said action, specially on ground that the damages were excessive, and aver that the condition of the pl'ff, since the trial has been such as to show that the estimate of the extent of the injury on which the verdict was based was incorrect.

(Endorsed:) March 16, 1871. Reserved for consideration, and judgment to be stayed in the case till further order. R. C. Pitman, J. S. C. Defendant's motion for new trial.

35 And now come defendants and move that the verdict may be set aside, because the damages were excessive.

(Endorsed by clerk:) March 16, 1871.

COMMONWEALTH OF MASSACHUSETTS:

Supreme judicial court for the commonwealth, at Boston, January term, 1872.

IN THE CASE OF BENJAMIN R. BRYANT
vs.
RICH & OTHERS, OWNERS OF STEAMER EASTERN QUEEN.

Pending in the superior court for the county of Suffolk.

Ordered that the clerk of said court in said county make the following entry under said case in the docket of said court, viz:

Exceptions overruled.

By the court.

GEO. C. WILDE, *Clerk.*

APRIL 11, 1872.

Brief statement of the grounds and reasons of the decision.

The petition for removal was filed too late.

36 [The commissioner is requested, in making his return, to write upon the envelope the names of the parties to the suit, and the title of the court.]

COMMONWEALTH OF MASSACHUSETTS, *Suffolk, ss:*

[SEAL.] To any commissioner appointed by the governor of said commonwealth of Massachusetts, or to any justice of the peace, notary public, or other officer legally empowered to take depositions or affidavits in Savannah, in the State of Georgia, greeting:

Assured of you' prudence and fidelity, we do, by these presents, appoint and empower you to take the deposition of George M. Weymouth, of Savannah, in said State of Georgia, to be used in a suit now pending in our superior court, between Benjamin R. Bryant, as plaintiff, and owners of steamer Eastern Queen, as defendants; and on certain days, to be by you appointed to cause the deponent to come before you, and him carefully examine on oath or affirmation, in answer to several interrogatories hereunto annexed; and reduce the examination, or cause the same to be reduced, to writing in your presence; and after such deposition shall thus be reduced to writing, it shall be carefully read to or by the deponent, and shall then be subscribed by him.

You shall permit neither party to attend at the taking of the deposition, either himself, or by any attorney or agent, nor to communicate by interrogatories or suggestions with the deponent whilst giving his deposition in answer to the interrogatories annexed to his commission. And you shall take such deposition in a place separate and apart from all other persons, and permit no person to be present during such examination, except the deponent and yourself, and such disinterested person (if any) as you may think fit to appoint as a clerk, to assist you in reducing the deposition to writing. And you shall put the several interrogatories and cross-interrogatories to the deponent in their order,

37 and take the answer of the deponent to each, fully and clearly, before proceeding to the next, and not read to the deponent, nor permit the deponent to read, a succeeding interrogatory, until the answer to the preceding has been fully taken down.

Of this our writ, with your doings by warrant of the same, you will make return under seal into our said court with all convenient expedition.

Witness the Honorable Lincoln F. Brigham, chief justice of our said court, and the seal thereof, at our city of Boston, on this sevente'nth day of March, in the year of our Lord one thousand eight hundred and seventy.

JOS. A. WILLARD, *Clerk.*

38 STATE OF GEORGIA, *County of Chatham, ss:*

Pursuant to the foregoing commission I caused the said George W. Weymouth to come before me, on the twenty-fifth day of March, A. D. 1870, and having sworn the said George W. Weymouth, to testify the truth, the whole truth, and nothing but the truth relating to the cause for which the deposition is taken, I examined the said George W. Weymouth, and reduced his testimony to writing. Neither of said parties was present by himself, or by an agent or an attorney, nor did either of them communicate in any manner with the deponent whilst giving his deposition; and I took said deposition separate and apart from all other

persons, no person being present except myself, and in taking the depositions I put the interrogatories and cross-interrogatories to the deponent as directed in the foregoing commission, and in all respects fully and exactly complied with the directions in said commission in taking the same. And after the said deposition was taken, I carefully read the same to the said George W. Weymouth, and he subscribed it in my presence.

[SEAL.] FRANK S. HESSELTINE,
Notary Public, Chatham Co., Geo.

39 January term, 1870.

Interrogatories proposed by the plaintiff in the above action to George W. Weymouth, of Savannah, in the State of Georgia, for his deposition to be used in behalf of the pl'ff.

Int. 1. State your age, residence, and occupation.

Int. 2. Are you acquainted with Benjamin R. Bryant, of Boston, the plaintiff in the above-entitled action? If so, state when you first became acquainted with him.

Int. 3. Were you with him on board of the steamer "Eastern Queen," on a trip from Boston to ports in the State of Maine, on the 12th of September, A. D. 1868?

Int. 4. Were you present at any difficulty which arose on board of said steamer during the trip in which the plaintiff Bryant was concerned? If so, state all that you saw of the occurrence. Be particular
40 to state fully all that was said and done by all the parties engaged, while you were present.

Int. 5. If you saw any assault committed upon the plaintiff Bryant, state whether it was committed by passengers or by persons employed upon the boat.

Int. 6. If the assault was committed by persons employed upon the boat, state in what capacity they were employed and how you know this.

Int. 7. State how many of the employees of the boat you saw engaged in the assault, and give their names, if you know them.

Int. 8. In what part of the boat did the assault which you describe take place?

Int. 9. State whether you saw the plaintiff strike any one during the affray.

41 Jan'y term, 1870.

Cross-interrogatories proposed by the defendants in the above action to George W. Weymouth, of Savannah, Georgia, for his deposition, to be used in behalf of the plaintiff.

Cross-int. 1. In what business were you engaged at the time of the trip on the "Eastern Queen," in Sept., 1868? State particularly.

Cross-int. 2. Had you, a short time before, been employed in a ship belonging to J. P. Morse of Bath; and had you been discharged from the same for drunken'ess?

Cross-int. 3. On the evening in question when you went down on the "Eastern Queen," was there a noisy & disorderly crowd aboard?

Cross-int. 4. Were you drunk or sober that evening?

Cross-int. 5. Had you been drinking that afternoon or evening?

42 Cross-int. 6. Was the captain present in the cabin during the

affray? If so, was it during the whole or a part of the time, and what, if anything, did he do?

Cross-int. 7. Do you know Frank Dumphy?

Cross-int. 8. Did you tell him that the captain was present all the time, & did not interfere, & that you were sorry you didn't draw your pistol and clean out the whole steamer's crew, or words to that effect?

STATE OF GEORGIA,
County of Chatham, City of Savannah:

GEORGE M. WEYMOUTH, of Richmond, State of Maine, being duly sworn in answer to the interrogatories and cross-interrogatories hereto annexed, deposeth and saith:

To the first interrogatory he saith: "I am forty-four years old; reside in Richmond, Maine, and am a mariner."

43 To the second he saith: "I am not acquainted with the plaintiff. I met him once on the steamer 'Eastern Queen,' in the month of September, eighteen hundred and sixty-eight."

To the third he saith. "I was on the boat on that trip."

To the fourth he saith: "I was present. I was on deck and went below to get a cup of tea for my wife's mother. As I went into the cabin I saw several waiters, belonging to the boat, beating a man. There was considerable commotion and rush around the place of beating, and all I saw was the waiters striking the man. The passengers manifested considerable indignation, and some threats of retaliation were made by some of them. I heard a man say, who I took to be the party who had been beaten by the waiters, that he did not

44 wish any violence or disturbance on his account. I did not stop but a moment, and went up to look out for my family. I have stated all that I saw and heard. There was considerable disturbance, and I kept clear of it. I saw the plaintiff next morning and he had a handkerchief bound round his head and over part of his face."

To the fifth he saith: "The assault was by waiters upon the boat and not by passengers."

To the sixth he saith: "I have said they were waiters I knew they were waiters by their dress; they were dressed as waiters."

To the seventh he saith: "I cannot say how many there were. I saw there were a number of them, and in the confusion did not count them. I know the names of none of them."

45 To the eighth he saith: "It was in the gentlemen's cabin, where the passengers dine. I was on one side of the table and the beating took place on the other side."

To the ninth he saith: "I did not see the plaintiff strike any one."

To the first cross-interrogatory he saith: "I was in no business at that time. I had been master of the ship Atlantic, and had sold her in New York, and was on my way home with my family."

To the second cross he saith: "A short time before I had been employed by J. P. Morse, on his ship Atlantic. I was not discharged from that ship. In June, 1869, I was discharged from the ship Geo. M. Adams, in Chincha Islands, Peru, which was caused by a slanderous letter, written to J. P. Morse by the mate."

46 To the third cross he saith: "There was a large number on the boat going down to Maine to the election, to be held on the following Monday. There was a man speaking on politics on the first deck in the forward part of the boat some time that evening, and there was considerable cheering and confusion."

To the fourth cross he saith: "I was not drunk; I had my wife, her mother, and my child with me, and it is not reasonable to suppose I was drunk under such circumstances."

To the fifth cross he saith: "I had not."

To the sixth cross he saith: "I met the captain coming into the cabin as I was going out of the cabin. The affair was not over when I left, I mean it had not quieted down."

To the seventh cross he saith: "I do."

To the eighth cross he saith: "I did not."

GEO. M. WEYMOUTH.

Subscribed & sworn to before me, this twenty-fifth day of March, A. D. 1870.

[SEAL.] FRANK S. HESSELTINE,
Notary Public, Chatham County, Georgia.

47 [The commissioner is requested, in making his return, to write upon the envelope the names of the parties to the suit, and the title of the court.]

COMMONWEALTH OF MASSACHUSETTS, *Suffolk, ss:*

[SEAL.] To any commissioner appointed by the governor of said Commonwealth of Massachusetts, or any justice of the peace, notary public, or other officer legally empowered to take depositions or affidavits in the State of Maine, greeting:

Assured of you' prudence and fidelity, we do by these presents, appoint and empower you to take the deposition' of Warren Ware and Franklin Ware, both of Pittston, in said State of Maine, to be used in a suit now pending in our superior court, between Benjamin R. Bryant as plaintiff, and owners of steamer Eastern Queen as defendants, and on certain days, to be by you appointed to cause the deponent to come before you, and then carefully examine on oath or affirmation, in answer to several interrogatories hereunto annexed; and reduce the examination, or cause the same to be reduced, to writing in your presence; and after such deposition shall thus be reduced to writing, it shall be carefully read to or by the deponent, and shall then be subscribed by him.

You shall permit neither party to attend at the taking of the deposition, either himself, or by any attorney or agent, nor to communicate by interrogatories or suggestions with the deponent whilst giving his deposition in answer to the interrogatories annexed to his commission. And you shall take such deposition in a place separate and apart from all other persons, and permit no person to be present during such examination, except the deponent and yourself, and such disinterested person (if any) as you may think fit to appoint as a clerk, to assist you in reducing the deposition to writing. And you shall put the several interrogatories and cross-interrogatories to the deponent in their order,
48 and take the answer of the deponent to each, fully and clearly, before proceeding to the next, and not read to the deponent, nor permit the deponent to read, a succeeding interrogatory, until the answer to the preceding has been fully taken town.

Of this our writ, with your doings by warrant of the same, you will make return under seal into our said court with all convenient expedition.

Witness the Honorable Lincoln F. Brigham, chief justice of our said court, and the seal thereof, at our city of Boston, on this ninth day of April, in the year of our Lord one thousand eight hundred and sixty-nine.

JOS. A. WILLARD, *Clerk.*

49 STATE OF MAINE, *Kennebec, ss:*

Pursuant to the foregoing commission I caused the said Warren Ware to come before me, on the seventeenth day of April, A. D. 1869, and having sworn the said Warren Ware to testify the truth, the whole truth, and nothing but the truth, relating to the cause for which the deposition is taken, I examined the said Warren Ware, and reduced the testimony to writing. Neither of said parties was present by himself, or by an agent or an attorney, nor did either of them communicate in any manner with the deponent whilst giving his deposition; and I took said deposition separate and apart from all other persons, no person being present except myself and said deponent; and in taking the depositions I put the interrogatories and cross-interrogatories to the deponent as directed in the foregoing commission, and in all respects fully and exactly complied with the directions in said commission in taking the same. And after the said deposition was taken, I carefully read the same to the said Warren Ware, and he subscribed it in my presence.

SAMUEL LANE,
Justice of the Peace.

Fees: Witness Warren Ware, 87; subpœna & service, 1.10; magistrate for tak'g dep., 1.50—3.47.

MARCH 29TH, 1869.

50 Interrogatories to Warren Ware and Franklin Ware, both of Pittston, in the State of Maine, to be used in behalf of the plaintiff in the above entitled action.

Interrogatory 1st. State if you are over twenty-one years of age.

51 2d. Do you know Benjamin R. Bryant, the plaintiff in this suit? If so, state how long you have known him, and if you were with him on board the steamer Eastern Queen, on the 12th of Sept'r, 1868.

3d. Were you present at the time of any difficulty on board of said steamer at that time? If so, state what occurred. Be particular and state all the circumstances of what transpired, and the names of the parties and their relations to each other.

4th. Do you know whether the parties who assaulted the plaintiff, Bryant, were employed on the steamer?

5th. How were they employed; I mean in what capacity?

6th. If anything further was said by the parties at the time refer'ed to, please state it fully?

52 APRIL 3D, 1869.

Cross-interrogatories to Warren Ware and Franklin Ware, both of Pittston, in the State of Maine, witnesses in behalf of the plaintiff in the above action.

1st cross-int'y. If you were present at the time of the alleged difficulty on board the Eastern Queen, Sept'r 12th, 1868, at what time in the day or night did it occur?

2d cross-int'y. Were you present when said difficulty commenced, and during the time it existed; and if so, in what part of the steamer were you?

3d cross-int'y. Did you hear the plaintiff make any remarks in a

loud tone of voice, and to whom were they addressed, and what did he say?

4th cross-int'y. Did you hear the plaintiff say to the steward of said steamer, "that he had something to do about the matter," & put his (plaintiff's) hands on the collar or shoulder of the steward?

53 5th cross-int'y. Were you present and did you see the plaintiff go into the lower cabin and make the same remark, & again put his hands on the shoulder of the steward?

6th cross-int'y. Did you hear a passenger advise the plaintiff's cousin (or some other person) to "go to his berth" when Bryant, the plaintiff, began to interfere & make remarks, and was it not the interference, blustering, & crowding of the plaintiffs that caused blows to be struck, if any were struck?

7th cross-int'y. Was the plaintiff struck by an employee of the said steamer? If yes, give the name of said employee, and in what capacity he served, & how do you know he was an employee?

8th cross-int'y. Who rescued Bryant from the crowd, if any one?

9th cross-int'y. Are either of you in any related to the plaintiff; & if yea, what is your relationship?

54 I, Warren Ware, of Pittston, State of Maine, of lawfull age, being first sworn to testify to the truth, the whole truth, and nothing but the truth, on oath do depose and say, and in answer to the interrogatories hereto annexed.

Ans. to int. 1st. I am.

Ans. to int. 2d. I did not know Benj. R. Bryant until I saw him on board of the boat Eastern Queen, Sept., 1868. I was with him on the steamer, on the 12th of Sept'r, 1868.

Ans. to int. 3d. I was present. I went down into the cabin to get my supper. After I got into the cabin I heard some loud talk, and I went into the crowd to see what it was. The first I saw or heard was, the steward asking a young man for his pay for his supper. The young man replied, I have paid for my supper. Then Mr. Bryant step'ed up and put his hand on the young man's shoulder, who he called his
55 cousin, and said to the steward, I guess he has paid for his supper. Then one of the waiters step'ed up and said, Damn you, what have you to say about it, and struck Bryant; then all the rest of the waiters piled in and gave him a pounding. They knocked him down, and I should think as many as a half a dozen of the waiters piled on to him and pounded him. He gave them no occasion to strike him whatever. When he got up he was all covered with blood.

Ans. to int. 4. I do know they were persons employed aboard the steamer who assaulted him.

Ans. to int. 5. One of them was the steward, and the others acting as waiters on the table.

Ans. to int. 6. I do not think of anything more. I desire to state that one of the waiters was a man with a black moustache.

Ans. to cross-interrogatories.

Ans. to 1st cross-int. It occur'ed some time in the evening. I think not far from eight o'clock.

56 Ans. to 2d cross-int. I was present from the beginning to the end of it, and it was in the same cabin.

Ans. to 3d cross-int. I heard him groaning and begging them to let

him alone, for they were killing him. They were addressed to the men who were pounding him.

Ans. to 4th cross-int. I did not see him do it.

Ans. to 5th cross-int. I did not.

Ans. to 6th cross-int. I heard the steward or some of the waiters tell him to get into his berth. Mr. Bryant did not crowd, or bluster, or make any disturbance whatever.

Ans. to 7th cross-int. I do not know their names; but it was the steward and the waiters on the table that struck him. I know they were employees of the boat, for I saw them waiting on the table and working about the boat.

57 Ans. to 8th cross-int. After they got through pounding him they left him, and he got up himself.

Ans. 9th cross-int. I am no relation to the plaintiff.

WARREN WARE.

I, Franklin Ware, of Pittston, State of Maine, of lawfull age, being first sworn to testify to the truth, the whole truth, and nothing but the truth, on oath do depose and say in answer to the interrogatories hereunto annexed:

Ans. to int. 1st. I am eighteen years old.

Ans. to int. 2nd. I did not know him untill that night. I was with him on the steamer Eastern Queen, on the 12th of September, A. D. 1868.

Ans. to int. 3d. I was present. I went down into the lower cabin to get my supper. I heard some loud talk, and I went to see what

58 it was. After I got into the cabin I heard some one talking to a young man about not paying for his supper. Mr. Bryant put his hand on a young man's shoulder, who he called his cousin, and said I guess he has paid for his supper, or something like that. One of the waiters said Damn you, what have you got to say about it, and struck him. The rest of the waiters joined right in on him. They knocked him down and then pounded him. The first man that struck him was a man with a black moustache. I should think there were as many a half a dozen that helped pound him, who were waiters on the boat. He gave them no occasion to strike him whatever. When he got up his face was all covered with blood.

Ans. to int. 4. Those men that assaulted Mr. Bryant were men employed on the steamer.

Ans. to int. 5. They were the steward and the waiters.

59 Ans. to int. 6. I do not think of anything more.

Answers to cross-interrogatories.

Ans. to 1st cross-int. It occurred, I should think, about eight o'clock in the evening.

Ans. to 2d cross-int. I was present when it commenced and when it ended, and it was in the lower cabin.

Ans. to 3d cross-int. I heard him groaning and beg'ing for them to let him alone, for they would kill him.

Ans. to 4th cross-int. I did not.

Ans. to 5th cross-int. I was present, but did not hear or see anything of the sort.

Ans. to 6th cross-int. I heard some of the waiters order him to his berth. Mr. Bryant did not bluster or make any disturbance whatever.

Ans. to 7th cross-int. Yes; he was struck by the employees of

60 the boat. I do not know their names. I know they were employees, for I saw them waiting on the table, and doing work for the boat.

Ans. to cross-int 8. He got up himself.

Ans. to 9th cross-int. I am no relation to Mr. Mr. Bryant.

FRANKLIN WARE.

STATE OF MAINE, *Kennebec, ss:*

Pursuant to the foregoing commission, I caused the said Franklin Ware to come before me on the seventeenth day of April, A. D. 1869, and after having sworn the said Franklin Ware to testify the truth, the whole truth, and nothing but the truth relating to the cause for which the deposition is taken, I examined the said Franklin Ware and reduced his testimony to writing. Neither of the parties was present by himself or by an agent or attorney, nor did either of them communicate in any manner with the deponent whilst giving his deposition; and I took said deposition separate and apart from all other persons, no person being present except myself and said deponent; and in taking the deposition, I put the interrogatories and cross-interrogatories as directed in the commission hereto annexed, and in all respects fully and exactly complied with the instructions in said commission in taking the same. After the said deposition was taken, I carefully read the same to the said Franklin Ware and he subscribed the same in my presence.

SAMUEL LANE,
Justice of the Peace.

Fees: Witness Franklin Ware, 87; subpœna & service, 1.10; magistrate for taking dep., 1.50—3.47.

61 [The commissioner is requested, in making his return, to write upon the envelope the names of the parties to the suit, and the title of the court.]

COMMONWEALTH OF MASSACHUSETTS, *Suffolk, ss:*

[SEAL.] To any commissioner appointed by the governor of said Commonwealth of Massachusetts, or to any justice of the peace, notary public, or other officer legally empowered to take depositions or affidavits in the State of Maine, greeting:

Assured of you' prudence and fidelity, we do by these presents appoint and empower you to take the deposition of Dr. Stephen Whitmore of Gardiner, in said State of Maine, to be used in a suit now pending in our superior court, between Benjamin R. Bryant as plaintiff, and owners of steamer Eastern Queen as defendants; and on certain days, to be by you appointed to cause the deponent to come before you, and him carefully examine on oath or affirmation, in answer to several interrogatories hereunto annexed; and reduce the examination, or cause the same to be reduced, to writing in your presence; and after such deposition shall thus be reduced to writing, it shall be carefully read to or by the deponent, and shall then be subscribed by him.

You shall permit neither party to attend at the taking of the deposition, either himself, or by any attorney or agent, nor to communicate by interrogatories or suggestions with the deponent whilst giving his deposition in answer to the interrogatories annexed to his commission. And you shall take such deposition in a place separate and apart from all other persons, and permit no person to be present during such examina

tion, except the deponent and yourself, and such disinterested person (if any,) as you may think fit to appoint as a clerk, to assist you in reducing the deposition to writing. And you shall put the several interrogatories and cross-interrogatories to the deponent in their order, and take the answer of the deponent to each, fully and clearly
62 before proceeding to the next, and not read to the deponent, nor permit the deponent to read, a succeeding interrogatory, until the answer to the preceding has been fully taken down.

Of this our writ, with your doings by warrant of the same, you will make return under seal into our said court with all convenient expedition.

Witness the Honorable Lincoln F. Brigham, chief justice of our said court, and the seal thereof, at our city of Boston, on this nineteenth day of April, in the year of our Lord one thousand eight hundred and sixty-nine.

JOS. A. WILLARD, *Clerk.*

63 STATE OF MAINE, *Kennebeck, ss :*

Pursuant to the foregoing commission I caused the said Doct. Stephen Whitmore to come before me, on the twentieth day of April, A. D. 1869, and having sworn the said Stephen Whitmore to testify the truth, the whole truth, and nothing but the truth relating to the cause for which the deposition is taken, I examined the said *the said* Whitmore, and reduced his testimony to writing. Neither of said parties was present by himself, or by an agent or an attorney, nor did either of them communicate in any manner with the deponent whilst giving his deposition; and I took said deposition separate and apart from all other persons, no person being present except myself and said Whitmore, and in taking the depositions I put the interrogatories and cross-interrogatories to the deponent as directed in the foregoing commission, and in all respects fully and exactly complied with the directions in said commission in taking the same. And after the said deposition was taken, I carefully read the same to the said Stephen Whitmore, and he subscribed it in my presence.

SAMUEL LANE,
Justice of the Peace.

Fees: Witness Stephen Whitmore, 62; subpœna & service, 1.10; magistrate for tak'g dep., 1.50—$3.22.

Interrogatories to Dr. Stephen Whitmore, of Gardiner, in the State of Maine, by C. Cummings, att'y for Benj. R. Bryant, to be used in behalf of the pl'ff in said case.

Int. 1. State your occupation, age, and residence, and where you resided during September, 1868.

Int. 2. Do you know Benj. R. Bryant, of Boston?

65 Int. 3. State whether you saw Mr. Bryant in a proffessional way during the month of Sept'r last. If yea, state how you happened to see him, and state what was his condition at that time.

Int. 4. If he was injured, state your opinion, as a medical man and physician, the character and danger of that injury.

Int. 5. Would such an injury be likely to prove of a permanent nature?

Int. 6. Please state upon what part of the body or head the injuries were inflicted.

Int. 7. What was the condition of his mind at the time you prescribed for him?

Int. 8. How often did you see him, and for how long a time after the injury occurred? State fully and particularly his condition when you first saw him and during the whole time you attended him.

66 (The defendant objects to the 5th and 7th direct interrogatories, and propounds the following cross-interrogatories to the said Stephen Whitmore, of Gardiner, in the State of Maine:)

1st cross-int'y. If you say, in answer to first direct interrogatory, that you are a physician, where were you educated, and how long and where have you practiced?

2d cross-int'y. When did you last see the plaintiff in your professional capacity?

3d cross-int'y. How many professional visits did you make the plaintiff, what was the amount of your charges, and what has he paid you?

I, Stephen Whitmore, of Gardiner, State of Maine, of lawful age, being first sworn to testify to the truth, the whole truth, and nothing but the truth, on oath do depose and say, and in answer to the interrogatories hereunto annexed—

67 Ans. to int. 1st. I am a physician, in the city of Gardiner, and I am 55 years old. I resided in the city of Gardiner, Sept'r, 1868.

Ans. to int. 2d. Yes, I do.

Ans. to int. 3d. I did. He came to me Sunday morning, I think, soon after the boat got in from Boston, to consult me. I found him much bruised on top of the head, forehead, and swollen about the eyes. He complained of a severe headache, and the scalp very sensitive.

Ans. to int. 4th. Externally, about the head and face, were marks of great violence, and the severe pain in the head indicated concussion of the brain, and, in my opinion, there was great danger of inflammation of the brain as the result of his injuries; and he complained of pain through his back and chest. He was so badly injured I did not consider him able to ride five miles to his wife's folks.

68 Ans. to int. 5. There would be danger of its being permanent.

Ans. to int. 6. The top of the head, forehead, eyes, and face. I saw marks of violence.

Ans. to int. 7. My impression his mind was somewhat wandering.

Ans. to int. 8. I saw him a number of times; do not remember how many days. He complained of having a very violent pain in the head, which continued while he was under my care, but no' so severe at the last of it as when I first saw him. He complained of great 'eal of suffering through the chest and back.

Ans. to 1st cross-int. Medical school, Brunswick, Maine; Boston, Mass.; Philadelphia, Penn.; & twenty-four years in the city of Gardiner.

69 Ans. to 2nd cross-int. From one to two weeks, as near as I can recollect, after the assault, I last attended him.

Ans. to 3d cross-int. I did not visit him at all. He came to me. I charged him five dollars. He has not yet paid me.

STEPHEN WHITMORE.

Deposition of Samuel H. Woodbury.

I, Samuel H. Woodbury, of lawful age, on oath depose and say to the following interrogatories and cross-interrogatories as follows:

Int. 1. State your name, age, residence, and present occupation.

Ans. 1. Samuel H. Woodbury; 22 years of age, and a seaman; residence, Bristol, Maine.

Int. 2d. How and where are you at present employed?
(Objected to by def't.)
Ans. 2d. I am master of a vessel at New York.
70 Int. 3d. Do you expect to leave this State; if so, how long do you expect to be gone?
(Objected to by def't.)
Ans. 3d. I am going to leave to-night. It is uncertain how long I shall be gone.
Int. 4th. Between what ports does the ship of which you are master, ply?
(Objected to by def't.)
Ans. 4th. New York and ports of the Southern States.
Int. 5th. Are you acquainted with Benjamin R. Bryant, of Boston, the plaintiff in an action against the owners of the steamer Eastern Queen. If so, state how long you have known him?
(Objected to by def't.)
Ans. 5th. I have known him since Sept., 1868.
Int. 6th. Were you with him on board the steamer Eastern Queen in the month of Sept. A. D. 1868. State the day of the month?
(Objected to by def't.)
Ans. 6th. I was. It was on the 12th of September, 1868.
Int. 7th. Were you present at any difficulty, which arose on board of said steamer during the trip in which the plaintiff, Benjamin R. Bryant was concerned. If so, state all that you saw of the occurrence.
71 Ans. 7th. I was. The trouble was between Mr. Coggin and one of the waiters. He accused him of not paying for his supper. He accused him twice. Mr. Bryant came down from the upper deck & asked Mr. Coggin if he was not going up on deck. Mr. Coggin said he was ready to go on deck, and started off. Mr. Brooks stepped up and said "One of you three have not paid for your supper." Mr. Coggin speaks up and says, "I suppose I am the one you mean. This is the 3d time you have been to me and accused me of not paying for my supper." Then Mr. Coggins took out his pocket-book and says, "I gave you a dollar bill, and here is the fifty cents you gave me back. Rather than have any trouble," says he, "I rather pay for the supper again." Mr. Bryant was standing along side of Mr. Brooks and put his hand on Mr. Brooks' shoulder and says, if *if* that man says he has paid for his supper I presume he has, for he is an honest man, and would cheat no man; and Mr. Brooks said, if you say he has paid for his supper it is all right, and turned to go away. One of the waiters stepped to Mr. Coggins
72 & asked him if he had a berth. Mr. Coggins said he had, the waiter told Mr. Coggins to get into his berth. Mr. Bryant says to Mr Coggins, "I don't think they have any right to make you get into your berth till you get ready. One of the waiters speaks up and says, "God d—n you, what have you got to say about it." The waiter rushed at Mr. Bryant and struck him; then one of the other waiters & Mr. Brooks rushed at him and struck him; that knocked him across the saloon amongst the crowd, & I could not see him, but I heard him beg that they would not kill him. I did not see him any more for the night. I did not see him any more.
Int 8th. In what part of the boat did the assault which you describe take place?
Ans. 8th. In the lower saloon.
Int. 9th. At what of the day did the assault take place?
Ans. 9th. At 7 o'clock in the afternoon.
Int. 10th. How do you know that the parties who assaulted Mr. Bryant were employed as waiters on the boat?

73 Ans. 10. The way they were dressed, and I recognized them the same that waited on the table.

Int. 11. How many of the waiters did you see engaged in the assault upon Mr. Bryant?

Ans. 11. Two waiters and the steward.

Int. 12. Who is the Mr. Brooks whom you have mentioned?

Ans. 12. The steward of the steamboat.

Int. 13. When Mr. Bryant to Coggins that they had no right to order him to his berth, state whether he spoke in an excited manner or not?

(Objected to by def't.)

Ans. 13. He did not.

Int. 14. State whether you saw Bryant strike any one during the affray?

Ans. 14. I did not.

Int. 15. State whether you saw any of the passengers strike Bryant or not?

15. Ans. I did not.

74 Cross interrogatories by def't:

X-int. 1st. Did you have a berth on the boat?

Ans. 1. I did.

X-int. 2. Did you pay your fare?

Ans. 2. I did.

X-int. 3. Did you pay it yourself at the office?

Ans. 3. I did.

X-int. 4. What was the number of your berth?

Ans. 4. I can't remember.

X-int. 5. What part of the boat was it? Describe particularly.

Ans. 5. About midships. I don't remember particularly.

X-int. 6. Which tier was it?

Ans. 6. The second.

75 X-int. 7. Are you sure?

Ans. 7. I am not positive.

X-int. 8. Are you sure that the berth was on the port side?

Ans. 8. I said I did not remember.

X-int. 9. What place did you buy a ticket for?

Ans. 9. For Bath, Maine, or Damariscotta, I don't know which.

X-int. 10. How much did you pay?

Ans. 10. I don't recollect certain.

X-int. 11. Did you give any name at the ticket office when you got your berth?

Ans. 11. I think I did.

X-int. 12. Are you sure you did?

Ans. 12. Am not positive.

76 X-int. 13. Were you asked your name?

Ans. 13. Am not positive.

X-int. 14. What name do you think you gave?

Ans. 14. S. H. Woodbury, if any.

X-int. 15. Are you sure of that?

Ans. 15. Yes, sir.

X-int. 16. How long have you been master of a vessel?

Ans. 16. About 3 months.

X-int. 17. What is the name of the vessel, and her size?

Ans. 17. S. H. Woodbury; 134 tons registry.

X-int. 18. How long did the scuffle in the cabin last?

Ans. 18. Not over 5 minutes, I should not think?

77 X-int. 19. What were you doing while it was going on?

Ans. 19. I was not doing anything; standing there in the crowd.

X-int. 20. How large a crowd was there?

Ans. 20. I couldn't give the exact number, but should think there was 75 to 100.

X-int. 21. Do you mean that that number was all there when the talk began?

Ans. 21. Some came down from the upper deck, I think, after the affair began.

X-int. 22. What part of the lower saloon was this crowd?

Ans. 22. Nearly in the middle.

X-int. 23. Did you get supper in the saloon? If so, was it the 1st, 2d, or 3d table?

Ans. 23. I got supper at the 1st table.

X-int. 24. What time did you get through with your supper; and what did you do and where did you go after it?

78 Ans. 24. I got through with my supper, as near as I could, about ½ past six. I went out to one side of the table and sat down.

X-int. 25. What did you pay for your supper, and to whom did you pay it?

Ans. 25. I paid 75 cents, & paid it to Mr. Brooks, the steward.

X-int. 26. How long after you got through with your supper was it that this scuffle began?

Ans. 26. Long enough for them to eat at the 2d table?

X-int. 27. Do you mean that it began immediately after they had eaten at the 2d table?

Ans. 27. Some 15 minutes to a half hour, probably.

X-int. 28. I understood you to say a moment ago that the time between the end of your supper and the beginning of the scuffle was only long enough for the 2d supper to be eaten. Do you mean to change that or not?

Ans. 28. The waiter accused Coggins of not paying for his supper immediately after he got done supper.

79 X-int. 29. At what table did Coggins get supper?

Ans. 29. 2d table.

X-int. 30. Are you as sure of that as any other fact you have testified to?

Ans. 30. I am sure; am sure of that as anything have testified to.

X-int. 31. Was the table laid again after Coggins had eaten his supper?

Ans. 31. I don't think it was.

X-int. 32. How near were you to Coggins when Brooks first spoke to him about his fare?

Ans. 32. I might have been three or four *foot*.

X-int. 33. How near were you to Bryant at that time?

Ans. 33. He was not in my sight.

X-int. 34. Where was Coggins when Brooks first spoke to him?

Ans. 34. In the lower saloon, about the middle part, I think.

80 X-int. 35. What do you mean by the middle part. Can't you describe it more accurat'ly?

Ans. 35. Amidships.

X-int. 36. Was it forward or abaft the gangway?

Ans. 36. Abaft the gangway.

X-int. 37. About how far?

Ans. 37. Just abaft the machinery.

X-int. 38. How long had Brooks & Coggins talked before Bryant came up; & where did he come from, if you saw?

Ans. 38. Perhaps it was 15 minutes; came from the upper deck I supposed.

X-int. 39. Was there a pretty rough crowd of passengers gathered in the saloon?

Ans. 39. Could not say they were very rough.

X-int. 40. Wasn't it a rougher set than you ordinarily see on these boats?

Ans. 40. I can't say *as* it was.

81 X-int. 41. Were not most of the crowd in the saloon passengers or waiters?

Ans. 41. Passengers.

X-int. 42. When the striking began, was the crowd gathered together very closely, or were they scattered round in different parts of the saloon?

Ans. 42. They were quite close

X-int. 43. After Bryant first stepped in & began to talk to Brooks, did you hear any one in the crowd shout, "Go in Bryant; we can take this damned boat & run her," or words to that effect?

Ans. 43. I did not.

X-int. 44. According to your story, then, the steward & three or four waiters pommelled Bryant, and you and the rest of the crowd looked on, and no one else uttered a word or struck a blow, and were all calm and quiet. Isn't that so?

Ans. 44. I saw 2 of the waiters & Mr. Brooks strike Mr. Bryant. I did not see any of the crowd strike, or say, or do anything.

82 X-int. 45. After Bryant first spoke to Brooks, did not Brooks start to go away, & did not Bryant follow him, put his hand on his shoulder, and speak to him again?

Ans. 45. Did not. He only spoke to him once.

X-int. 46. Describe the appearance and dress of the man that told Coggins to go to his berth.

Ans. 46. He was dressed in dark clothes, dark short coat. I do not know, as I can' describe features, any more.

X-int. 47. Had you ever seen him before that evening?

Ans. 47. Not that I remember.

Direct-examination resumed:

Int. 16. Were you acquainted with Mr. Bryant before the assault which you have described took place?

Ans. 16. I was not.

Cross-examination resumed:

X-int. 48. When did you make his acquaintance?

83 Ans. 48. I made his acquaintance there at that time.

X-int. 49. Did you come from N. Y. for any other purpose than to give this deposition?

Ans. 49. I did not.

S. H. WOODBURY.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk, ss:*

On the fifth day of March, in the year of our Lord one thousand eight hundred and seventy, the aforesaid deponent personally appeared

before me, the subscriber, at the city of Boston, in said county,
84 and he being first cautioned and sworn to speak the truth, the whole truth, and nothing but the truth in relation to the case for which this deposition was taken, gave the foregoing deposition, by him subscribed in my presence, and the same was by me reduced to writing in his presence, and carefully read to the deponent by me before his signing the same.

Taken at the request of Benjamin R. Bryant, and to be used in an action of tort now pending between him and the owners of the steamer "Eastern Queen," before the superior court within and for said county, and the adverse party was notified and was present. The reason for taking the above deposition is that the deponent is about to depart without the Commonwealth, not to return in time for the trial of the said action.

JEREMIAH BROWN,
Justice of the Peace.

Fees: Justice's service taking deposition, writing, &c., $10.00; deponent's travel, 80 miles, 3.20; attendance 1 day, .50—$13.70.

85 COMMONWEALTH OF MASSACHUSETTS, *Suffolk, ss:*

At a term of the superior court begun and held at Boston, for and within the county of Suffolk, on the first Tuesday of April, A. D. 1872.

BENJAMIN R. BRYANT, OF SAID BOSTON, commission-merchant, plaintiff, *vs.* THE OWNERS OF THE STEAMER "EASTERN Queen, whose names are unknown to the pl'ff, but whom, for the purposes of this suit, the pl'ff calls John Doe and Richard Roe, d'f'ts.	In an action of tort; writ dated the eighteenth day of December, A. D. 1868.

And the pl'ff says the d'f'ts, on the twelfth day of Sept., A. D. 1869, on board of the Eastern Queen, a steamboat plying between the port of Boston, in the Commonwealth of Massachusetts, and the
86 port of Gardiner, in the State of Maine, and belonging to the d'f'ts, and then being on her trip to said Gardiner, did assault, beat, wound, and maltreat the pl'ff, he being then on board of the said schooner and upon the high seas, as a passenger bound to said Gardiner, and having paid for his passage thereto; and did harshly and wantonly place him, the pl'ff, in a state-room and there kept him without care or attention for the space of one night, he then and there being in great bodily paid in consequence of said beating, whereby he suffered great damage in the loss of his time and great expense for medical attendance thereafter.

And the pl'ff also says the d'f'ts, by their servants and employees on board of the steamboat Eastern Queen, then and there belonging to them, and while on her passage from the port of Boston aforesaid to said port of Gardiner, the pl'ff then and there being a passenger, bound from said Boston to said Gardiner, having paid for his passage
87 thereto, did assault, beat, bruise, and wound the pl'ff, so that he was deprived of his senses and otherwise seriously injured about his head and person, so that his life was despaired of, and he was, in consequence of said injuries then and there inflicted upon him by said employees and servants of the d'f'ts, confined to his house and under medical treatment for the period of nearly two months; and still is suffering in his person great pain in consequence of said injuries.

To the damage of the said pl'ff. (as he says,) the sum of ten thousand dollars.

At the January term of our said court, A. D. 1869, the pl'ff appeared and entered the above action, and the d'f'ts appeared and filed their affidavit of defence and answer. And thence the same was continued to the April term, 1869, when the pl'ff, by leave, increased the ad damnum in the writ to twenty thousand dollars.

And thence the same was continued to the April term, 1870, when the pl'ff, by leave, amended his writ by adding thereto the names
88 of def'ts, and striking out the words, whose names are unknown to the pl'ff. but whom, for the purposes of this writ, the pl'ff calls John Doe and Richard Roe," as follows, to wit: Isaac Rich, Thomes A. Rich, Thomas W. Peirce, all of said Boston; Aaron B. Vannevar of Malden, in our County of Middlesex; Edward S. Dane of Brookline, in our County of Norfolk; Jason Collins, Julia Kimball, and W. W. Bradstreet, as administrator of the estate of William Bradstreet, of Gardiner, in the State of Maine; and Andrew Peirce, Jr. of St. Louis, in the State of Missouri.

And the pl'ff, by leave, filed a new count to his declaration, as follows, to wit:

And the pl'ff says the d'f'ts, on the twelfth day of September, A. D. 1868, were common carriers of freight and passengers by water between said Boston and the city of Gardiner, in the State of Maine, and owned and used a steamboat called the Eastern Queen, in the prosecution of their said business as common carriers as aforesaid, and the pl'ff was
89 then and there a passenger upon the d'f'ts' said steamboat, upon her trip from said Boston to said Gardiner; and it thereupon became and was the duty of said d'f'ts to transport the pl'ff from said Boston to said Gardiner with safety and reasonable comfort and despatch; and to use due and proper care and skill in and about the carrying of the pl'ff on said journey, and to exercise the utmost care and vigilance in selecting proper agents and servants in the business of running said steamboat on her trip aforesaid, and in attending to the comfort and safety of the passengers, including the pl'ff, and in maintaining order upon said steamboat, and in guarding the pl'ff against violence from whatever source arising while he was a passenger upon said steamboat.

Yet the d'f'ts, regardless of their duty, so carelessly, negligently, and improperly conducted themselves in that behalf, that they did not transport the pl'ff from said Boston to said Gardiner with reasonable
90 comfort and safety, and did not use due and proper care and skill in and about the carrying of said pl'ff upon said journey, and did not exercise the utmost care and vigilance in selecting proper agents and servants in the business of running said steamboat, and in attending to the comfort and safety of the passengers thereon, including the pl'ff, and in maintaining order upon said steamboat, and in guarding the pl'ff against violence from whatever source arising while he was a passenger upon said boat; and so carelessly, negligently, and improperly conducted themselves in and about the carrying of the pl'ff on the said steamboat on said journey, that they then and there carelessly, negligently, and wilfully, suffered and permitted the pl'ff to be set upon, assaulted, and beaten, by persons upon said boat, and by their agents and servants, whereby the pl'ff was severely wounded and injured, and suffered great bodily and mental pain and anguish, and was, for a long time confined to his house, and under medical treatment, and subjected to great expense for medical attendance and care, and has been

91 rendered unable to attend to his business, and has been permanently injured in body and mind.

And after a full hearing the cause was committed to a jury sworn to try the same, who returned their verdict therein, that is to say: "The jury find for the pl'ff, and assess damages in the sum of eight thousand dollars."

And thereupon the def'ts alleged sundry exceptions to the rulings of the court in matters of law, and the same were reduced to writing. And thence the same was continued to the July term, 1870, when the said exceptions having been seen and understood by the court were allowed and signed by the presiding judge. And thence the same was continued to the January term, 1871, when a rescript from the supreme judicial court for the Commonwealth was filed, overruling said exceptions.

And thereupon the def'ts move for leave to file a motion for new trial in said action specially on ground that the damages were excessive, and aver that the condition of pl'ff *pl'ff* since the trial has been such
92 as to show that the estimate of the extent of the injury on which the verdict was based, was incorrect. And the def'ts Peter G. Bradstreet, William W. Bradstreet, & Julia Kimball, all of Gardiner, in the county of Kennebec and State of Maine, come and before final herein' in this action respectfully represent that the pl'ff in said action is a citizen of Massachusetts, and they defendants as aforesaid, are citizens of the State of Maine; that the matter in dispute exceeds the sum of five hundred dollars, exclusive of costs; that they have reason to and do believe that, from prejudice and local influence, they will not be able to obtain justice in the court in which said action is now pending as aforesaid. Wherefore they petition this honorable court for the removal of said suit into the next circuit court of the United States to be held in the district of Massachusetts, where said suit is now pending; and they hereby offer good and sufficient surety for their entering in such court, on the first day of its session, copies of all process,
93 pleadings, depositions, testimony, and other proceedings in said suit and doing such appropriate acts as by law are required to be one upon the removal of a suit into United States court.

And the d'f'ts named in said petition, in addition, being severally duly sworn, on oath depose and say that they are defendants in the above entitled action and are citizens of the State of Maine; that the matter in dispute in said action exceeds the sum of five hundred dollars, exclusive of costs; and that they have reason to and do believe that, from prejudice and local influence, they will not be liable to obtain justice in said State court, to wit, the superior court for the Commonwealth of Massachusetts. And thence the same was continued to the April term, 1871, when the motion for leave to file motion for new trial was overruled and the petition to remove to U. S. circuit court denied.

And the d'f'ts alleged sundry exceptions to the ruling and opinion of said court in reference to said motion and petition, and, the same
94 having been found conformable to the truth, was allowed and signed by the presiding judge. And thence the same was continued to the present term. And now a rescript from the supreme judicial court for the Commonwealth is filed, overruling said exceptions. And the death of the d'f't Isaac Rich is suggested of record.

It is therefore considered by the court, on the twenty-second day of June, A. D. 1872, that the said Bryant recover of the said Thomas A. Rich, Thomas W. Peirce, Aaron B. Vannevar, Edward S. Dane, Jason Collins, Julia Kimball, Andrew Pierce, j'r, and the estate of William

Bradstreet, in the hands and possession of W. W. Bradstreet, administrator, the sum of eight thousand nine hundred ninety-six dollars and costs of suit taxed at two hundred & twenty-five dollars and twenty-four cents.

Copy of judgment.

95 UNITED STATES OF AMERICA, *ss*:

[SEAL.] The President of the United States to the honorable the the judges of the superior court of the Commonwealth of Massachusetts, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said superior court before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the suit between Benjamin R. Bryant, of Boston, in the Commonwealth of Massachusetts, plaintiff, and Aaron B. Vannevar, Edward S. Dane, Andrew Pierce, jr., T. W. Pierce, William W. Bradstreet, Peter G. Bradstreet, Jason Collins, Julia Kimball, and Thomas A. Rich, defendants, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption, especially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said defendants, as by their complaint appears: We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, this 28th day of June, in the year of our Lord one thousand eight hundred and seventy-two.

JOHN G. STETSON,
Clerk of the Circuit Court of the United States.

Allowed by—

NATHAN CLIFFORD,
Associate Jus. Sup. Court of the U. S.

96 COMMONWEALTH OF MASSACHUSETTS, *Suffolk, ss:*

And now the judges of the superior court in and for the county of Suffolk and said Commonwealth, make return of this writ by annexing hereto and sending herewith under the seal of said superior court, and as within

commanded, a true and attested copy of the record and process in the suit within mentioned and of all proceedings therein, with all things concerning the same.

In testimony whereof I, Jos. A. Willard, clerk, of said superior court, within and for said county, have hereunto set my hand and affixed the seal of said court, this fourth day of September, anno nostri Domini eighteen hundred seventy-two.

[SEAL.] JOS. A. WILLARD, *Clerk.*

97 The United States of America to Benjamin R. Bryant, of Boston, in the Commonwealth of Massachusetts, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the superior court of the Commonwealth of Massachusetts, wherein Aaron B. Vannevar, Edward S. Dane, Andrew Pierce, jr., T. W. Pierce, William W. Bradstreet, Peter G. Bradstreet, Aaron Collins, Julia Kimball, and Thomas A. Rich, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Nathan Clifford, justice of the Supreme Court of the United States, this 28th day of June, in the year of our Lord one thousand eight hundred and seventy-two.

NATHAN CLIFFORD,
Associate Jus. Sup. Court of the U. S.

98 U. S. OF AMERICA, *Mass. Dis't, ss:*

BOSTON, *June* 29th, 1872.

I hereby certify, that I have served the within citation, by delivering to the within-named R. B. Bryant in hand, a true and attested copy of this precept.

R. G. USHER,
U. S. Marshal.

Fees: Service, $2.00; copy, 1.00; travel, 6.00—$9.00.

(Indorsed:) 844. Aaron B. Vannevar et als. v. Benjamin R. Bryant, Morse, Stone & Greenough.

(Indorsement on cover:) No. 565. Aaron Vannevar, Edward S. Dane' Andrew Pierce, jr., T. W. Pierce, W. W. Bradstreet, P. G. Bradstreet Jason Collins, Julia Kimball, & Tho's A. Rich, cl'm'ts steamboat Eastern Queen, plaintiffs in error, vs. Benjamin R. Bryant. Massachussetts supr. ct. Filed 7th December, 1872.

Supreme Court of the United States.

No. 565, Dec. Term, 1872.

AARON B. VANNEVAR ET ALI.,

PLAINTIFFS IN ERROR,

vs

BENJAMIN R. BRYANT.

BRIEF FOR THE PLAINTIFFS IN ERROR, UPON THE MOTION TO DISMISS.

BOSTON:
ALFRED MUDGE & SON, PRINTERS, 34 SCHOOL STREET.
1873.

Supreme Court of the United States.

AARON B. VANNEVAR ET ALI., PLAINTIFFS IN ERROR,

vs.

BENJAMIN R. BRYANT.

BRIEF FOR THE PLAINTIFFS IN ERROR.

[The figures in brackets refer to the pages of the Transcript of Record.]

THE defendant in error brought a suit in the Superior Court of Massachusetts against the owners of the steamer "Eastern Queen," describing them in his writ as John Doe and Richard Roe, and declared in tort for an assault committed on him while he was a passenger on said steamer. [pp. 1, 2.] During the trial he amended his writ by inserting therein the names of the plaintiffs in error as defendants [pp. 3, 10], and he also amended his declaration by the addition of a count in contract, claiming that the plaintiffs in error under their contract to transport him, were bound to protect him from assault while in the course of transportation. [pp. 3, 10.] No evidence having been offered for the defence, a verdict was rendered for the defendant in error for $8,000. [pp. 4, 5.]

The plaintiffs in error took exceptions to the rulings of the presiding judge, which were subsequently argued before the Supreme Judicial Court of Massachusetts, and were overruled by them March 15, 1871, on the ground that the acts proved were in violation of the contract of the owners of the steamer.

[p. 9.] The plaintiffs in error then presented a motion for a new trial, and also filed a motion in conformity with the rules of the Court, setting forth grounds on which they claimed that the motion for a new trial should then be filed March 16, 1871. [p. 10.] Before these motions were heard, those of the plaintiffs in error, who were citizens of Maine, filed a petition for the removal of the suit into the United States Circuit Court under the Act of Congress of March 2, 1867. [14 Sts. at L., 558,] [pp. 9, 11.]

When said motions and petitions for removal came up for hearing, the presiding judge refused to grant the petition, solely on the ground that it was filed too late, and exceptions being taken to that refusal, the motions were reserved by the Court for consideration until the exceptions should be heard and determined by the Supreme Judicial Court. [p. 11.] After hearing and argument, the Supreme Judicial Court overruled the exceptions, April 11, 1872, on the ground that the petition for removal was filed too late (p. 12,) and subsequently the Superior Court overruled the motions for new trial. Judgment was entered on the verdict June 22, 1872.

The plaintiffs in error claim, that the refusal of the Court of Massachusetts to grant the petition of those of the defendants who were citizens of Maine, for the removal of the suit into the Circuit Court of the United States was error, and that this Court has jurisdiction to re-examine the judgment of the State Court under the 25th section of the Judiciary Act, on the ground that the construction of the Act of Congress of March 2, 1867, was drawn in question and the decision was against the right claimed under it by the plaintiffs in error.

The defendant in error now moves to dismiss the writ for want of jurisdiction.

The plaintiffs in error submit in opposition to this motion, that it is well settled by the decisions of this Court, that error lies to a State Court for a refusal to allow a party to remove a cause into the Circuit Court of the United States.

Gordon *vs.* Longest, 16 Pet. 97.
Kanouse *vs.* Martin, 14 How. 23.
Same *vs.* Same, 15 Id. 198.

It is therefore necessary on the present motion to examine the record only so far as to ascertain whether the judgment of the State Court was such a refusal.

In the case of *Steines* vs. *Franklin County*, 14 *Wall.* 20, Mr. Justice Clifford says: "Before the Court can entertain jurisdiction to re-examine such a judgment or decree, it must appear either by express averment in the pleadings, or by clear and necessary intendment, that some one of the questions mentioned in the twenty-fifth section of the Judiciary Act, or in the second section of the act to amend the Judiciary Act, was raised in the State Court, and that it was there decided in the manner therein required to give this Court such appellate jurisdiction, or that the State Court could not have reached the conclusion it did without deciding the question, and in the manner required by those provisions to give this Court jurisdiction in the case.

Clear and necessary intendment that the question was raised and must have been decided as claimed, in order to have induced the judgment, is sufficient; but it is not sufficient to show that such a question might have arisen and been applicable to the case, unless it appears in the record that it did arise, and was applied by the State Court in disposing of the controversy."

The record shows that the affidavit was made and filed in accordance with the Act of Congress of March 2, 1867, and that the petition for removal of the action, based upon the affidavit, was presented to the State Court; that, after a hearing upon this petition, the right of removal claimed by the plaintiffs in error was denied solely on the ground that by the construction put by the State Court on the Act of Congress of March 2, 1867, the petition was presented too late; and that the Supreme Judicial Court of the State affirmed this decision on the same ground. [pp. 9, 10, 11, 12.]

It thus appears clearly from the record, that the State Court could not have reached the conclusion it did without drawing in question the construction of the Act of Congress of March 2, 1867, and deciding against the right of removal specially set up and claimed by the petitioners.

But the defendant in error, under the guise of an argument in support of his motion to dismiss, has in reality argued the case on its merits, and sought to obtain the decision of the

Court at this preliminary stage, on all the questions arising in the case. The plaintiffs in error protest that the defendant in error is not entitled to make this argument upon this motion to dismiss; but if, in the opinion of the Court, he has that right, and the plaintiffs in error are obliged now to submit their argument on the merits, without opportunity for oral argument, they then claim that the State Court erred in refusing the petition for removal, on the following grounds:—

I.

As to the time when the petition was presented.

The statute provides that the application for removal may be made at any time before "trial or final hearing." The plaintiffs in error contend that, having regard to the purpose for which the act was obviously intended, and the broad and general relief it was proposed to give, it must be construed as meaning that the application for removal may be made at any time before final judgment in the State Court. In this case the application was made before a hearing on the motion for new trial.

It is true, that there had been a trial of the action in the Superior Court, and that the exceptions to the rulings of the presiding judge had been overruled in the Supreme Judicial Court; but a motion had then been filed for leave to file a motion for a new trial, and a motion to set aside the verdict had been also presented to the Court. Upon this first motion, the Court reserved the question for consideration and ordered judgment to be stayed till further order. If the foreign defendants had not before the hearing of these motions made application for the removal of the action to the United States Court, a hearing would have been had upon the motions then before the Court, and it would have been within the power of the Court to set aside the verdict and order a new trial. If the Court had so

ordered, and the case had then stood for trial, it is settled that the foreign defendants could then have removed the action.

Akerly *vs.* Vilas, 1 Abbott, U. S. 288.
Johnson *vs.* Monell, 1 Wool. C. C. 396.

Now, if at a stage *subsequent* to that in which the action was, it could clearly have been removed, how can it be said that while the action was in the stage preceding this, the petition cannot be granted?

It is to be remarked that in *Akerly* vs. *Vilas*, in which the question of the time for making application was particularly discussed, there was a *judgment* in the lower court from which appeal was taken to the Supreme Court. It is undoubtedly true, therefore, that that case could not have been removed to the United States Court till the judgment had been vacated. But in the case at bar, no judgment had been entered when the petition for removal was presented. The language of Mr. Justice Miller, in *Akerly* vs. *Vilas*, is, "If the cause had been finally determined by either judgment of the Circuit Court or order of the Supreme Court, then the application for removal would not have been filed before the "final hearing or trial." In the present case, the application was made before a hearing upon motions that the verdict should be set aside. And while the hearing upon this motion might not prove to be the "final hearing" in the case, it is certainly reasonable to say that an application made before that hearing is made before the "final hearing." It is to be noted that Mr. Justice Miller does not give to the words "final hearing or trial," the technical meaning assigned to them by the learned judges of the State Courts in the cases cited on the brief of the defendant in error.

It may be said that the foreign defendants submitted themselves to the jurisdiction of the Court. In fact, they were not made parties to the suit till shortly before the trial, and only one of them was present thereat. But, conceding that they did appear sufficiently to have made the judgment of the Court

against them valid, they did not thereby lose their right to remove the action. The statute, throughout, contemplates removals though the foreign defendants have appeared in the action.

II.

As to the right of a *part* of the defendants to remove the case.

The plaintiffs in error submit that under the Act of March 2, 1867 [14 St. at L. 588], it is not necessary that all the defendants or all the plaintiffs should join in the petition for removal. Any one or more of the plaintiffs or defendants who are citizens of a State other than that in which the suit is brought, is entitled to remove the case upon complying with the provisions of the Act.

This appears not only from the language and object of the act itself, but also from a comparison of the Act with the Act of 1789, sec. 12 [1 St. at L. 79], and the Act of July 27, 1866. [14 St. at L. 306.]

The Act of 1789 gives the right of removal, "if the suit be commenced in any State Court against any alien, or by a citizen of the State in which the suit is brought against a citizen of another State;" and the construction put upon it, in a series of decisions, has been, that all the defendants must join in the petition for removal, and all must be citizens of a State other than that in which the suit is brought.

Smith *vs.* Rines, 2 Sumner, 338.
Ward *vs* Arredondo, 1 Paine, 410.
Beardsley *vs.* Torrey, 4 Wash. 286.

Under this Act, therefore, a suit could not be removed if one of the defendants were a citizen of the State in which the suit was brought, or if one of the defendants should refuse to join in the petition for removal.

The Act of July 27, 1866, extended the right of removal to suits in which one of the defendants is a citizen of the State in

which the suit is brought, and dispensed with the necessity of having all the defendants in such cases join in the petition for removal, by providing that the defendant who is a citizen of the State other than that in which the suit is brought, may have the suit removed as against him "if it is or has been instituted or prosecuted for the purpose of restraining or enjoining him, or if the suit is one in which there can be a final determination of the controversy so far as it concerns him, without the presence of the other defendants as parties in the cause."

The Act of March 2, 1867, seems to have been intended to extend the right of removal still further. The general object of the Act is to enable a citizen of one State to remove a suit in which he is joined as a party in the Court of another State, whenever he will make affidavit that he believes that from prejudice or local influence he will not be able to obtain justice in such State Court. If it were held that he could not remove the case unless all his co-plaintiffs or co-defendants should join in the petition, the Act would fall far short of giving that relief which it was manifestly intended to afford.

Moreover, it is to be presumed that in framing the Act of March 2, 1867, Congress had in view the construction which had been put upon the Act of 1789, and used different terms from those there used to describe the suits to which the Act applies with the intention of avoiding that construction.

The plaintiffs in error submit that the fair and reasonable construction of the Act of March 2, 1867, is, that any suit in a State Court in which a citizen of that State is joined as a party upon one side, and a citizen of another State is joined as a party on the other side, may be removed by such citizen of another State, to the Circuit Court of the United States, upon the conditions set forth in the Act.

R. M. MORSE, Jr.,
Attorney for Plaintiffs in Error.

Supreme Court of the United States.

No. Dec. Term, 1873.

AARON B. VANNEVAR *ET ALS,*

PLAINTIFFS IN ERROR,

VS.

BENJAMIN R. BRYANT.

BRIEF FOR THE DEFENDANT IN ERROR.

BOSTON:
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1874.

Supreme Court of the United States.

AARON B. VANNEVAR ET ALS., PLAINTIFFS IN ERROR,

vs.

BENJAMIN R. BRYANT.

BRIEF FOR THE DEFENDANT IN ERROR.

[The figures in brackets refer to the pages of the Transcript of Record.]

In December, 1868, the defendant in error brought a suit against the plaintiffs in error, to recover damages for injuries sustained by him while a passenger on their vessel. [pp. 1, 26.] The writ was returnable to the Superior Court, for Suffolk County, Massachusetts, on the first Tuesday of January, 1869. The writ described the plaintiffs in error as John Doe and Richard Rowe, but at the trial in April, 1870, it was amended by the insertion of their real names. [pp. 3, 26, 27.] After this amendment the trial was suspended four weeks, to enable the defendant in error to amend his declaration, and then resumed, and a verdict returned for the defendant in error for $8,000. [pp. 4, 10, 28.] Exceptions were taken to the rulings of the presiding Judge by the plaintiffs in error, and argued before the Supreme Judicial Court, which sent down a rescript at the January term, 1871, overruling the same. [pp. 4, 9, 10, 28.] The plaintiffs in

error then filed a motion for a new trial, and obtained a stay of judgment till this motion could be heard. [pp. 9, 28.] Two of the plaintiffs in error residing in Maine, and one other person, [Peter G. Bradstreet,] alleging himself to be a defendant in the suit, then filed a petition for the removal of the suit to the United States Circuit Court, under the Act of Congress, of March 2, 1867, (14 Stats. at Large 558). [pp. 9, 11, 28.] The defendant in error is a citizen of Massachusetts. [pp. 1, 26.] Four of the plaintiffs in errror are citizens of Massachusetts, three of Maine, and one of Missouri. [pp. 3, 10, 27.] Another of the defendants below, (Isaac Rich,) was a citizen of Massachusetts, but his death took place before judgment was entered. [pp. 3, 27, 28.] The Court overruled the motion for a new trial, and refused to grant the petition. [pp. 9, 28.] To the ruling denying the petition the plaintiffs in error excepted, and their exceptions were overruled by the Supreme Judicial Court in April, 1872. [pp. 11, 28.] Judgment was entered for the defendant in error June, 22, 1872., [p. 28,].

The plaintiffs in error claim that the refusal of the Court of Massachusetts to grant the petition of those of the defendants who were citizens of Maine for the removal of the suit into the Circuit Court of the United States was error.

I.

As the plaintiff below is a citizen of Massachusetts, the State in which the suit was brought, and four of the defendants are citizens of the same State, the case cannot be removed to the Circuit Court of the United States under the

Act of March 2d, 1867, upon the petition of the two defendants who are not citizens of that State, and there is no error in the refusal of the Massachusetts Court to grant their petition.

Case of the Sewing Machine Companies, 18 Wall. 553.
See also Ex parte Andrews & Mott, 40 Ala. 639
Miller *v* Finn, 1 Nebraska 254
Fisk *v* Chicago &c. R. R., 53 Barb. 472, 486.
Bryant *v* Rich, 106 Mass. 180, 191.

II.

To remove a cause under the Judiciary Act of 1789, ch. 20, sec. 12, it was necessary that all the Defendants be non-residents of the State in which the suit was brought, and that all join in the petition for removal.

Smith *v* Rines, 2 Sumner 338.
Ward *v* Arredondo, 1 Paine 410.
Beardsley *v* Torrey, 4 Wash. 286.
Hubbard *v* Northern R. R., 3 Blatch. 84.
Wilson *v* Blodget, 4 McLean, 363.
Ex parte Girard, 3 Wall. 263.
See also, Strawbridge *v* Curtis, 3 Cranch, 267.
Corporation of N. O. *v* Winter, 1 Wheat. 91.
Cameron *v* Roberts, 3 Wheat. 596.
Bell *v* Bell, 3 W. Va. 192.

The statute of 1867 differs from the Judiciary Act of 1789 only in this, that it extends the time in which the petition may be filed, requires the affidavit as to local influence, &c., and allows the Plaintiff as well as the Defendant to apply for the removal.

III.

The petition for removal should have been filed before the trial in the State Court.

Akerly *v* Vilas, 24 Wisc. 165.
Miller *v* Finn, 1 Neb. 254.

Wash. &c. R. R. *v* Alex. &c. R. R., 19 Gratt. 592.
Bryant *v* Rich, 106 Mass. 180.
See also. Bell *v* Bell, 3 W. Va. 183, 192.
McKee *v* Rains, 10 Wall. 22.

If it can, under any circumstances, be filed afterwards, it can only be after a new trial has been ordered in the State Court or while some question of law is still pending. In the present case there is no question either of fact or law remaining to be decided, and hence nothing for the United States Circuit Court to act upon.

IV.

If the statute of March 2, 1867, is construed as allowing a case, after trial in the State Court and when a new trial has not for any cause been granted, to be removed to the Circuit Court for a re-trial on the facts and law, it is unconstitutional.

Constitution of U. S. 7th Amendment.
Parsons *v* Bedford, 3 Pet. 448
The Justices *v* Murray, 9 Wall. 274.

CHARLES R. TRAIN,

Counsel for Defendant in Error.